

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

MICHAEL GEARY WILSON,	)	Case No. C 14-4844 PSG (PR)
	)	
Petitioner,	)	<b>ORDER OF DISMISSAL</b>
	)	
v.	)	
	)	
SUPERIOR COURT, et al.,	)	
	)	
Respondents.	)	

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Michael Geary Wilson, a California state pretrial detainee proceeding *pro se*, seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2241.<sup>1</sup> Wilson's motion to proceed *in forma pauperis* is granted. For the reasons that follow, Wilson's petition is dismissed without prejudice.

**BACKGROUND**

According to his petition, on February 7, 2014, and February 10, 2014, Judge Barry P. Goode of the Contra Costa Superior Court issued a verbal and written order, *inter alia*, prohibiting Wilson from bringing any recording device into a courthouse within the county without first obtaining permission from a Superior Court judge and entering any such

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<sup>1</sup> On November 6, 2014, Wilson consented to magistrate judge jurisdiction.

1 courthouse, subject to two exceptions.<sup>2</sup> On April 16, 2014, a complaint was filed against Wilson  
 2 for disobeying that court order.<sup>3</sup> On August 4, 2014, the prosecutor moved to amend the  
 3 complaint to add a second charge of disobeying that same court order for an incident that  
 4 occurred on June 19, 2014.<sup>4</sup> On September 24, 2014, the prosecutor filed a separate complaint  
 5 alleging one count of disobeying a court order regarding an incident that occurred on June 19,  
 6 2014.<sup>5</sup>

7 Wilson filed the instant federal petition for writ of habeas corpus on October 31, 2014  
 8 challenging the validity of the February 2014 orders. On November 24, 2014, Wilson filed a  
 9 similar state petition for a writ of habeas corpus in the Contra Costa Superior Court.<sup>6</sup>

## 10 DISCUSSION

### 11 A. Standard of Review

12 Section 2241 allows “the Supreme Court, any justice thereof, the district courts and any  
 13 circuit judge” to grant writs of habeas corpus “within their respective jurisdictions.”<sup>7</sup> Section  
 14 2241 is the proper basis for a habeas petition by a state prisoner who is not held “pursuant to the  
 15 judgment of a State court,”<sup>8</sup> for instance a pre-trial detainee, such as Wilson.<sup>9</sup>

16 A district court shall “award the writ or issue an order directing the respondent to show  
 17 cause why the writ should not be granted, unless it appears from the application that the  
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19 <sup>2</sup> See Petition, Attachment 13 at 1-4, Ex. 1 at 3-4.

20 <sup>3</sup> See Cal. Penal Code § 166(a)(4); Docket No. 3, Ex. 1 (“State Petition”) at 3.

21 <sup>4</sup> See *id.*

22 <sup>5</sup> See *id.*

23 <sup>6</sup> See *id.* at 27.

24 <sup>7</sup> 28 U.S.C. § 2241(a).

25 <sup>8</sup> 28 U.S.C. §2254.

26 <sup>9</sup> See *McNeely v. Blanas*, 336 F.3d 822, 824 n.1 (9th Cir. 2003) (determining that habeas corpus  
 27 under Section 2241(c)(3) “empowers district courts to issue the writ, *inter alia*, before a  
 28 judgment is rendered in a criminal proceeding.”).

applicant or person detained is not entitled thereto.”<sup>10</sup> Summary dismissal is appropriate only where the allegations in the petition are vague or conclusory, palpably incredible, or patently frivolous or false.<sup>11</sup>

**B. Petitioner’s Claim**

Even assuming that Wilson properly alleges a violation of the Constitution or laws or treaties of the United States in his federal habeas petition, principles of comity and federalism require that a reviewing court abstain and not entertain a pre-trial habeas challenge unless the petitioner shows that: (1) he has exhausted available state judicial remedies, and (2) “special circumstances” warrant federal intervention.<sup>12</sup>

Wilson has not done so. Instead, Wilson makes a bare allegation that he has exhausted his state remedies. However, it is clear from the record that the most recent criminal complaint and Wilson’s first state habeas petition were both filed after the commencement of this action. Moreover, only in cases of proven harassment or prosecutions undertaken by state officials in bad faith without hope of obtaining a valid conviction, and perhaps in other extraordinary circumstances where irreparable injury can be shown, is pre-conviction federal intervention against pending state prosecutions appropriate.<sup>13</sup> Wilson has not shown such irreparable injury.

Because the court must abstain from ruling on the petition until the Wilson’s state proceedings are completed and Wilson has exhausted his state court remedies, the instant petition is dismissed without prejudice.

**CONCLUSION**

The case is dismissed without prejudice to refile after Wilson’s state criminal proceedings are completed, and Wilson has exhausted his state court remedies. The Clerk shall

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<sup>10</sup> 28 U.S.C. § 2243.

<sup>11</sup> See *Hendricks v. Vasquez*, 908 F.2d 490, 491 (9th Cir. 1990) (quoting *Blackledge v. Allison*, 431 U.S. 63, 75-76 (1977)).

<sup>12</sup> See *Carden v. Montana*, 626 F.2d 82, 83-84 (1980); see also *Younger v. Harris*, 401 U.S. 37, 43-54 (1971).

<sup>13</sup> See *Carden*, 626 F.2d at 84.

1 terminate all pending motions and close the file.

2 In addition, a certificate of appealability is denied because Wilson has not shown “that  
3 jurists of reason would find it debatable whether the district court was correct in its procedural  
4 ruling.”<sup>14</sup>

5 IT IS SO ORDERED.

6 DATED: 1/23/2015

  
PAUL S. GREWAL  
United States Magistrate Judge

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28 <sup>14</sup> *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).